

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**Criminal Case No.**

**UNITED STATES OF AMERICA,  
Plaintiff,**

**v.**

**1. Xcel Energy, Inc.,  
2. Public Service Company of Colorado,  
3. RPI Coating, Inc.,  
4. Philippe Goutagny, and  
5. James Thompson,  
Defendants.**

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**INDICTMENT  
18 U.S.C. §§ 2, 1519  
29 U.S.C. § 666**

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The Grand Jury charges that:

1. On October 2, 2007, five men – Gary Foster, Don DeJaynes, Dupree Holt, Anthony Aguirre, and James St. Peters, all of whom were employed by RPI COATING, INC. – died at the Cabin Creek Hydro Plant, near Georgetown, Colorado. XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO operate the plant. The men were working inside a large, drained water pipe – called a penstock – when a fire erupted, but they did not die from exposure to the fire’s heat and flames. Their escape from the penstock was blocked by the fire, and they survived inside the penstock for about one hour before dying from asphyxiation due to inhalation of carbon monoxide produced by the fire. The five deaths were caused by violations of the Occupational Safety and Health Administration’s workplace safety and health regulations, as alleged below, which resulted in the fire and the failure to rescue the

men.

2. XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO operate the Cabin Creek Hydro Plant, located on Guanella Pass Road at about 10,000 feet elevation. It is a pumped storage electric power generation plant. Water is stored in an upper reservoir at about 11,000 feet elevation. During the day that water flows downhill through the penstock to turbines that generate electricity, and then into a lower reservoir at about 10,000 feet elevation. During the night the water is pumped back up through the penstock to the upper reservoir. The plant is located at a remote mountain site accessible only on a winding mountain road.

3. The penstock is a pipe running approximately 4,000 feet through a mountain. The penstock consists of three sections of differing construction. The upper section is a 15-foot diameter concrete pipe dropping vertically about 20 feet, then at a 55° angle for approximately 1,000 feet. The middle section is a 15-foot diameter concrete pipe dropping at a 10° angle for approximately 1,500 feet. The lower section is an approximately 12-foot diameter steel pipe dropping at a 2° angle for approximately 1,500 feet, then dropping vertically for about 50 feet to the turbines.

4. The steel section of the penstock had a lining to protect the steel from the water. By 2007, the lining of the steel section of the penstock had reached the end of its useful life. The Cabin Creek relining project involved maintenance of the penstock's lining system by removing the old liner and replacing it with a new epoxy liner.

5. In 2007, XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO contracted with RPI COATING, INC. to perform the maintenance work. RPI COATINGS, INC. is a specialty coatings application company headquartered in Sante Fe Springs, California. Both XCEL ENERGY, INC. and PUBLIC SERVICE

COMPANY OF COLORADO participated in the planning, bidding, review, execution, and supervision of the penstock relining project.

6. PHILIPPE GOUTAGNY was the owner, president, and member of the board of directors of RPI COATING, INC. He had the authority to direct and control all of the activities of RPI COATING, INC., including the Cabin Creek penstock relining project. He was involved in the planning and supervision of the project. He visited and inspected the project on about September 24, 2007.

7. JAMES THOMPSON was a vice-president and member of the board of directors of RPI COATING, INC. He had the authority to direct and control many of the activities of RPI COATING, INC. He was involved in planning the Cabin Creek relining project, and he directed and supervised the project. He visited and inspected the project on about September 24, 2007.

8. The penstock was a permit-required confined space subject to the Occupational Safety and Health Administration's general industry confined space regulation, found at 29 C.F.R. §1910.146, and other regulations specified below. However, prior to the penstock relining project, XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO consistently treated the penstock as a non-permit-required confined space.

9. XCEL ENERGY, INC., PUBLIC SERVICE COMPANY OF COLORADO, RPI COATING, INC., PHILIPPE GOUTAGNY, and JAMES THOMPSON were all aware that the relining project posed recognized serious health and safety hazards to their employees working inside the penstock. Additionally, during the penstock relining project several incidents occurred that posed health and safety hazards to employees working inside the penstock, and XCEL ENERGY, INC., PUBLIC SERVICE COMPANY

OF COLORADO, RPI COATING, INC., and JAMES THOMPSON knew about those incidents. Nonetheless, XCEL ENERGY, INC., PUBLIC SERVICE COMPANY OF COLORADO, RPI COATING, INC., PHILIPPE GOUTAGNY, and JAMES THOMPSON did not comply with the confined space regulation at 29 U.S.C. §1910.146.

10. During the bidding, planning, contract negotiation, pre-job, and execution phases of the relining project in 2007, XCEL ENERGY, INC., PUBLIC SERVICE COMPANY OF COLORADO, and RPI COATING, INC. considered whether the penstock relining project involved a permit-required confined space entry. At a September 2007 pre-job meeting, representatives of XCEL ENERGY, INC., PUBLIC SERVICE COMPANY OF COLORADO, and RPI COATING, INC., including JAMES THOMPSON, discussed whether the project involved a permit-required entry, and they all agreed that they would follow RPI COATING, INC.'s confined space program. However, XCEL ENERGY, INC., PUBLIC SERVICE COMPANY OF COLORADO, RPI COATING, INC., PHILIPPE GOUTAGNY, and JAMES THOMPSON did not develop and implement a written permit space program that complied with the requirements of the confined space regulation at 29 C.F.R. §1910.146.

11. During the planning, contract negotiation, and execution phases of the relining project in 2007, XCEL ENERGY, INC., PUBLIC SERVICE COMPANY OF COLORADO, and RPI COATING, INC. considered what to do in the event rescue and emergency services were needed for the penstock relining project. At a July 2007 safety training exercise at the Cabin Creek Hydro Plant the upcoming penstock relining project was discussed, and a representative of the Clear Creek Fire Authority told XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO representatives that his agency would like to do some preparation and training at the Cabin Creek Hydro Plant

in anticipation of the relining project. XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO did not conduct such an exercise. At a September 2007 pre-job meeting, representatives of XCEL ENERGY, INC., PUBLIC SERVICE COMPANY OF COLORADO, and RPI COATING, INC., including JAMES THOMPSON, discussed rescue and emergency services options. XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO instructed RPI COATING, INC. that in the event rescue and emergency services were needed during the project its employees should call the control room operators at Cabin Creek Hydro Plant, who would, in turn, call 911.

12. From about September 4 to October 2, 2007, during the outage of the Cabin Creek Hydro Plant while the upper reservoir and penstock were drained of water, RPI COATING, INC. employees undertook blasting the old lining system from the steel pipe section and applying the new epoxy liner, all under the supervision of XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO. During that period, XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO had their employees working intermittently inside the penstock, performing inspections, doing welding, supervising and inspecting the relining project, and other general industry activities.

13. On October 2, 2007, an employee of XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO entered the penstock early in the morning to perform welding, and then left the penstock. Thereafter, RPI COATING, INC. employees began spraying the new epoxy liner onto the steel pipe section. They had methyl ethyl ketone, a common industrial solvent also known as MEK, inside the penstock to clean their application equipment. MEK is a Class 1-B flammable liquid which is volatile at low temperatures. They encountered difficulties with the epoxy

application equipment, and they brought additional MEK into the penstock to clean their application equipment.

14. XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO were familiar with MEK, and they knew that RPI COATING, INC. had two 55-gallon drums of MEK on site for use in the relining project and that MEK was recommended for use with the epoxy materials. It was foreseeable to XCEL ENERGY, INC., PUBLIC SERVICE COMPANY OF COLORADO, RPI COATING, INC., PHILIPPE GOUTAGNY, and JAMES THOMPSON that RPI COATING, INC. would use the MEK inside the penstock during the relining project and that the presence of MEK inside the penstock could cause injury and death to people working inside the penstock.

15. On October 2, 2007, the MEK that RPI COATING, INC. employees brought into the penstock volatilized into the air in the work space, causing employees to suffer irritation and complain to their managers. An ignition source in the vicinity of the epoxy sprayer ignited the MEK vapor, starting a fire. There was only one viable egress point, which was located at the low end of the penstock. The fire was located between the five men who died and that egress point, so the five men retreated up the penstock, but they were unable to get past the 55° section of the penstock. Several RPI COATING, INC. employees located on the other side of the fire escaped the penstock and lived. RPI COATING, INC. employees called the Cabin Creek control room operators, who, in turn, called 911. Numerous rescue and emergency responders came to the plant, but they were not trained and equipped for the task, and their efforts did not succeed in rescuing the five trapped men.

16. XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO committed the following acts which caused the deaths of the five employees:

- a. XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO willfully violated 29 C.F.R. 1910, §§ 146(c)(1), (c)(2), (c)(4), (c)(8)(i), (d)(9), and (k)(1)(i) through (v).
- b. XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO aided, abetted, counseled, commanded, induced, and procured the commission of violations of 29 C.F.R. §§1910.146(k)(1)(i) through (v) by RPI COATING, INC., PHILIPPE GOUTAGNY, and JAMES THOMPSON.

The provisions that XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO violated, which provisions are standards, rules, and regulations promulgated and prescribed pursuant to Title 29, United States Code, Chapter 15, are more particularly described as follows:

<b>Provisions of 29 CFR 1910 Violated and a General Description of the Provisions</b>	<b>Manner and Means By Which These Defendants Violated the Provisions</b>
§146(c)(1): The employer shall evaluate the workplace to determine if any spaces are permit-required confined spaces.	XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO evaluated the penstock via hazard assessments, but they did not determine that the penstock was a permit-required confined space.
§146(c)(2): If the workplace contains permit spaces, the employer shall inform exposed employees, by posting danger signs or by any other equally effective means, of the existence and location of and the danger posed by the permit spaces.	XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO did not inform their exposed employees, by posting danger signs and by other equally effective means, of the existence and location of and the danger posed by entry into the penstock for the relining project.

<p>§146(c)(4): If the employer decides that its employees will enter permit spaces, the employer shall develop and implement a written permit space program that complies with §146. The written program shall be available for inspection by employees and their authorized representatives.</p>	<p>XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO did not develop and implement a written permit space program for the Cabin Creek job that complied with §146.</p>
<p>§146(c)(8)(i): When an employer (host employer) arranges to have employees of another employer (contractor) perform work that involves permit space entry, the host employer shall inform the contractor that the workplace contains permit spaces and that permit space entry is allowed only through compliance with a permit space program meeting the requirements of §146.</p>	<p>XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO arranged to have employees of another employer, RPI Coating, Inc., perform work inside the penstock that involved permit space entry, but they did not inform RPI COATING, INC. that the penstock was a permit space and that entry was allowed only through compliance with a permit space program meeting the requirements of §146.</p>
<p>§146(d)(9): Develop and implement procedures for summoning rescue and emergency services, for rescuing entrants from permit spaces.</p>	<p>XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO developed and implemented a procedure for summoning rescue and emergency services – which was call the Cabin Creek control room operators, who would then call 911 – but they did not develop and implement procedures for rescuing entrants from permit spaces.</p>



<p>§146(k)(1)(i): An employer who designates rescue and emergency services pursuant to paragraph (d)(9) of §146 shall evaluate a prospective rescuer's ability to respond in a timely manner, considering the hazard(s) identified.</p>	<p>XCEL ENERGY, INC., PUBLIC SERVICE COMPANY OF COLORADO, and RPI COATINGS, INC. were required to comply with §146(k)(1)(i). RPI COATINGS, INC. discussed with XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO what should be done in the event rescue and emergency services were needed. XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO directed RPI COATING, INC. to call the Cabin Creek control room operators, who would call 911. However, XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO did not evaluate the prospective rescuers' ability to respond in a timely manner, considering the hazards identified.</p>
<p>§146(k)(1)(ii): An employer who designates rescue and emergency services pursuant to paragraph (d)(9) of §146 shall evaluate a prospective rescue service's ability, in terms of proficiency with rescue-related tasks and equipment, to function appropriately while rescuing entrants from the permit space.</p>	<p>XCEL ENERGY, INC., PUBLIC SERVICE COMPANY OF COLORADO, and RPI COATINGS, INC. were required to comply with §146(k)(1)(i). RPI COATINGS, INC. discussed with XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO what should be done in the event rescue and emergency services were needed. XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO directed RPI COATING, INC. to call the Cabin Creek control room operators, who would call 911. However, XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO did not evaluate the prospective rescuers' ability, in terms of proficiency with rescue-related tasks and equipment, to function appropriately while rescuing entrants from the permit space.</p>

<p>§146(k)(1)(iii): An employer who designates rescue and emergency services pursuant to paragraph (d)(9) of §146 shall select a rescue team or service that has the capability to reach victims within a time frame that is appropriate for the permit space hazards identified and that is equipped for and proficient in performing the needed rescue services.</p>	<p>XCEL ENERGY, INC., PUBLIC SERVICE COMPANY OF COLORADO, and RPI COATINGS, INC. were required to comply with §146(k)(1)(i). RPI COATINGS, INC. discussed with XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO what should be done in the event rescue and emergency services were needed. XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO directed RPI COATING, INC. to call the Cabin Creek control room operators, who would call 911. However, XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO did not select a rescue team and service that had the capability to reach victims within a time frame that was appropriate for the permit space hazards identified and that was equipped for and proficient in performing the needed rescue services.</p>
<p>§146(k)(1)(iv): An employer who designates rescue and emergency services pursuant to paragraph (d)(9) of §146 shall inform each rescue service of the hazards they may confront when called on to perform rescue at the site.</p>	<p>XCEL ENERGY, INC., PUBLIC SERVICE COMPANY OF COLORADO, and RPI COATINGS, INC. were required to comply with §146(k)(1)(i). RPI COATINGS, INC. discussed with XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO what should be done in the event rescue and emergency services were needed. XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO directed RPI COATING, INC. to call the Cabin Creek control room operators, who would call 911. However, XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO did not inform each rescue service of the hazards they may confront when called on to perform rescue at the site.</p>

§146(k)(1)(v): An employer who designates rescue and emergency services pursuant to paragraph (d)(9) of §146 shall provide the rescue team or service selected with access to all permit spaces from which rescue may be necessary so that the rescue service can develop appropriate rescue plans and practice rescue operations.	XCEL ENERGY, INC., PUBLIC SERVICE COMPANY OF COLORADO, and RPI COATINGS, INC. were required to comply with §146(k)(1)(i). RPI COATINGS, INC. discussed with XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO what should be done in the event rescue and emergency services were needed. XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO directed RPI COATING, INC. to call the Cabin Creek control room operators, who would call 911. However, XCEL ENERGY, INC. and PUBLIC SERVICE COMPANY OF COLORADO did not provide the rescue team and service selected with access to all permit spaces from which rescue may be necessary so that the rescue service could develop appropriate rescue plans and practice rescue operations.
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17. RPI COATING, INC., PHILIPPE GOUTAGNY, and JAMES THOMPSON willfully violated the following standards, rules, and regulations, which provisions were promulgated and prescribed pursuant to Title 29, United States Code, Chapter 15:

<b>Provisions of 29 CFR 1910 Violated and a General Description of the Provisions</b>	<b>Manner and Means By Which These Defendants Violated the Provisions</b>
§146(c)(1): The employer shall evaluate the workplace to determine if any spaces are permit-required confined spaces.	RPI COATING, INC., PHILIPPE GOUTAGNY, and JAMES THOMPSON did not evaluate the workplace to determine if any spaces were permit-required confined spaces.
§146(c)(2): If the workplace contains permit spaces, the employer shall inform exposed employees, by posting danger signs or by any other equally effective means, of the existence and location of and the danger posed by the permit spaces.	RPI COATING, INC., PHILIPPE GOUTAGNY, and JAMES THOMPSON did not inform exposed employees, by posting danger signs and by any other equally effective means, of the existence and location of and the danger posed by the permit spaces.

<p>§146(c)(4): If the employer decides that its employees will enter permit spaces, the employer shall develop and implement a written permit space program that complies with §146. The written program shall be available for inspection by employees and their authorized representatives.</p>	<p>RPI COATING, INC., PHILIPPE GOUTAGNY, and JAMES THOMPSON did not develop and implement a written permit space program for the Cabin Creek job that complied with §146.</p>
<p>§146(d)(2): Identify and evaluate the hazards of permit spaces before employees enter them.</p>	<p>RPI COATING, INC., PHILIPPE GOUTAGNY, and JAMES THOMPSON did not identify and evaluate the hazards of the penstock before their employees entered it.</p>
<p>§146(d)(3)(iv): Develop and implement the means, procedures, and practices necessary for safe permit space entry operations, including ventilating the permit space as necessary to eliminate or control atmospheric hazards.</p>	<p>RPI COATING, INC. installed a ventilation system inside the penstock, but the ventilation system was inadequate to eliminate and control the atmospheric hazards resulting from the presence of MEK inside the penstock.</p>
<p>§146(d)(4)(ii): Provide ventilating equipment needed to obtain acceptable entry conditions.</p>	<p>RPI COATING, INC. installed a ventilation system inside the penstock, but at the time of the fire on October 2, 2007, one of the dehumidification units and the dust collector were not operating, and the ventilation system was inadequate to obtain acceptable entry conditions.</p>
<p>§146(d)(5)(i): Evaluate permit space conditions when entry operations are conducted, including test conditions in the permit space to determine if acceptable entry conditions exist before entry is authorized to begin, and, if entry is authorized, entry conditions shall be continuously monitored in the areas where authorized entrants are working.</p>	<p>RPI COATING, INC. conducted air monitoring at the entrance hatch, but it failed to continuously monitor the air where entrants were working.</p>
<p>§146(d)(5)(ii): Evaluate permit space conditions when entry operations are conducted, including test or monitor the permit space as necessary to determine if acceptable entry conditions are being maintained during the course of entry operations.</p>	<p>RPI COATING, INC. conducted air monitoring at the entrance hatch, but it did not monitor the permit space where its employees were working as necessary to determine if acceptable entry conditions were being maintained during the course of entry operations.</p>

<p>§146(d)(9): Develop and implement procedures for summoning rescue and emergency services, for rescuing entrants from permit spaces.</p>	<p>RPI COATING, INC., PHILIPPE GOUTAGNY, and JAMES THOMPSON developed and implemented a procedure for summoning rescue and emergency services – which was call the Cabin Creek control room operators, who would then call 911 – but they did not develop and implement procedures for rescuing entrants from permit spaces.</p>
<p>§146(d)(13): Review entry operations when the employer has reason to believe that the measures taken under the permit space program may not protect employees and revise the program to correct deficiencies found to exist before subsequent entries were authorized.</p>	<p>RPI COATING, INC., PHILIPPE GOUTAGNY, and JAMES THOMPSON had reason to believe that the measures taken under the permit space program may not protect employees, based upon their own observations of the penstock on about September 24, 2007, and based upon their knowledge that the sprayer would be located inside the penstock during application of the epoxy liner, necessitating the introduction of a solvent into the penstock.</p>
<p>§146(d)(13): Review entry operations when the employer has reason to believe that the measures taken under the permit space program may not protect employees and revise the program to correct deficiencies found to exist before subsequent entries were authorized.</p>	<p>RPI COATING, INC. and JAMES THOMPSON had reason to believe that the measures taken under the permit space program may not protect employees, based upon events occurring inside the penstock during the job, including an injury to Greg Ledbetter, Jr., multiple instances of evacuation of the penstock due to high levels of carbon monoxide, and damage to electrical equipment.</p>
<p>§146(k)(1)(i): An employer who designates rescue and emergency services pursuant to paragraph (d)(9) of §146 shall evaluate a prospective rescuer's ability to respond in a timely manner, considering the hazard(s) identified.</p>	<p>RPI COATING, INC., PHILIPPE GOUTAGNY, and JAMES THOMPSON did not evaluate a prospective rescuer's ability to respond in a timely manner, considering the hazards identified.</p>

<p>§146(k)(1)(ii): An employer who designates rescue and emergency services pursuant to paragraph (d)(9) of §146 shall evaluate a prospective rescue service's ability, in terms of proficiency with rescue-related tasks and equipment, to function appropriately while rescuing entrants from the permit space.</p>	<p>RPI COATING, INC., PHILIPPE GOUTAGNY, and JAMES THOMPSON did not evaluate a prospective rescue service's ability, in terms of proficiency with rescue-related tasks and equipment, to function appropriately while rescuing entrants from the permit space.</p>
<p>§146(k)(1)(iii): An employer who designates rescue and emergency services pursuant to paragraph (d)(9) of §146 shall select a rescue team or service that has the capability to reach victims within a time frame that is appropriate for the permit space hazards identified and that is equipped for and proficient in performing the needed rescue services.</p>	<p>RPI COATING, INC., PHILIPPE GOUTAGNY, and JAMES THOMPSON did not select a rescue team and service that had the capability to reach victims within a time frame that was appropriate for the permit space hazards identified and that was equipped for and proficient in performing the needed rescue services.</p>
<p>§146(k)(1)(iv): An employer who designates rescue and emergency services pursuant to paragraph (d)(9) of §146 shall inform each rescue service of the hazards they may confront when called on to perform rescue at the site.</p>	<p>RPI COATING, INC., PHILIPPE GOUTAGNY, and JAMES THOMPSON did not inform any rescue services of the hazards they may confront when called on to perform a rescue at the site.</p>
<p>§146(k)(1)(v): An employer who designates rescue and emergency services pursuant to paragraph (d)(9) of §146 shall provide the rescue team or service selected with access to all permit spaces from which rescue may be necessary so that the rescue service can develop appropriate rescue plans and practice rescue operations.</p>	<p>RPI COATING, INC., PHILIPPE GOUTAGNY, and JAMES THOMPSON did not provide the rescue team and service selected with access to all permit spaces from which rescue may be necessary so that the rescue service could develop appropriate rescue plans and practice rescue operations.</p>
<p>§106(e)(2)(iv)(a): Flammable liquids shall be kept in covered containers when not actually in use.</p>	<p>RPI COATING, INC. maintained MEK inside the penstock in uncovered buckets when not actually in use.</p>



§106(e)(2)(iv)(c): Class 1 liquids may be used only where there are no open flames or other sources of ignition within the possible path of vapor travel.	RPI COATING, INC. used MEK, a Class 1 liquid, inside the penstock where there were sources of ignition within the possible path of vapor travel.
§106(e)(2)(iv)(d): Flammable liquids shall be drawn from or transferred into vessels, containers, or portable tanks within a building only through a closed piping system, from safety cans, by means of a device drawing through the top, or from a container or portable tanks by gravity through an approved self-closing valve.	RPI COATING, INC. drew and transferred MEK into vessels, containers, and portable tanks within a building, that is, the penstock, by several means, including pouring MEK from plastic buckets into the sprayer's hoppers and by pumping MEK from plastic buckets into the sprayer, neither of which complied with §106(e)(2)(iv)(d).
§106(e)(6)(i): Adequate precautions shall be taken to prevent the ignition of flammable vapors.	RPI COATING, INC. did not take precautions adequate to prevent the ignition of flammable vapors in that it failed to adequately control and eliminate MEK vapors and all sources of ignition.
§106(e)(7)(i)(a): All electrical wiring and equipment shall be installed according to the requirements of Subpart S of Part 1910.	RPI COATING, INC. and JAMES THOMPSON supplied the Cabin Creek job with equipment not rated to be used within classified locations, including lights, a sprayer, and power distribution centers.
§304(g)(5): The path to ground from circuits, equipment, and enclosures shall be permanent, continuous, and effective.	RPI COATING, INC. used a sprayer inside the penstock that did not have a permanent, continuous, and effective path to ground.
§157(d)(1): Portable fire extinguishers shall be provided for employee use and selected and distributed based on the classes of anticipated workplace fires and on the size and degree of hazard which would affect their use.	RPI COATING, INC. provided fire extinguishers, but it failed to distribute them based upon the classes of anticipated workplace fires and on the size and degree of hazard which would affect their use.
§157(d)(4): The employer shall distribute portable fire extinguishers for use by employees on Class B fires so that the travel distance from the Class B hazard area to any extinguisher is 50 feet or less.	RPI COATING, INC. provided fire extinguishers, but it failed to distribute them within 50 feet of the employees' work area inside the penstock.

**COUNTS 1 - 5**

Violating OSHA Regulation and Causing Death, 29 U.S.C. §666

18. Paragraphs 1 through 17 are realleged and incorporated into Counts 1 through 5 by reference.

19. On or about October 2, 2007, in the State and District of Colorado, XCEL ENERGY, INC., PUBLIC SERVICE COMPANY OF COLORADO, RPI COATING, INC., PHILIPPE GOUTAGNY, and JAMES THOMPSON were employers who willfully violated standards and rules promulgated by the Occupational Safety and Health Administration (OSHA) pursuant to section 655 of Title 29, United States Code, and willfully violated regulations prescribed pursuant to Chapter 15 of Title 29, United States Code, and those violations, which are specified above in paragraphs 16 and 17 and apply to all counts, caused death to the employee specified below for each count:

<b>Count</b>	<b>Deceased Employee</b>
1	Gary Foster
2	Don DeJaynes
3	Dupree Holt
4	Anthony Aguirre
5	James St. Peters

20. All of the foregoing was in violation of Title 29, United States Code, Section 666, and Title 18, United States Code, Section 2.

**COUNT 6**

Obstruction, 18 U.S.C. §1519

21. On or about October 3, 2007, and continuing thereafter to August, 2009, in the State and District of Colorado, RPI COATING, INC. knowingly altered, destroyed, concealed, and covered up records, documents, and tangible objects, to wit: Gary



Foster's and Don DeJaynes' cameras and journals and Greg Ledbetter Sr.'s cell phone, with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of a department and agency of the United States, to wit: the Occupational Safety and Health Administration and the Chemical Safety Board.

22. All of the foregoing was in violation of Title 18, United States Code, Sections 2 and 1519.

A TRUE BILL.

Ink signature on file in the clerk's office  
Foreperson

DAVID M. GAOUETTE  
United States Attorney

s/John Haried  
John Haried  
Assistant United States Attorney\_\_  
1225 Seventeenth Street, Suite 700  
Denver, Colorado 80202  
Telephone: (303) 454-0100  
Facsimile: (303) 454-0404  
E-mail: John.Haried@usdoj.gov  
Attorney for Government\_\_

DATE: August 27, 2009

DEFENDANT: XCEL ENERGY, INC.

ADDRESS: Minneapolis, Minnesota

COMPLAINT FILED? \_\_\_\_\_ YES X NO

IF YES, PROVIDE MAGISTRATE CASE NUMBER: \_\_\_\_\_

IF NO, PROCEED TO "OFFENSE" SECTION

HAS DEFENDANT BEEN ARRESTED ON COMPLAINT? \_\_\_\_\_ YES X NO

IF NO, A NEW WARRANT IS REQUIRED

OFFENSE:

\_\_\_\_\_ COUNT ONE THROUGH FIVE: Title 29, United States Code, Section 666,  
Violating OSHA Regulation and Causing Death.

LOCATION OF OFFENSE (COUNTY/STATE): Clear Creek County, Colorado.

PENALTY: COUNT ONE THROUGH FIVE: NMT \$500,000 fine for each Count;  
\$100 Special assessment fee.

AGENT: Michael Lynham, OSHA

AUTHORIZED BY: John Haried  
Assistant U.S. Attorney

ESTIMATED TIME OF TRIAL:

\_\_\_\_\_ five days or less X over five days \_\_\_\_\_ other

THE GOVERNMENT

\_\_\_\_\_ will seek detention in this case X will **not** seek detention in this case

The statutory presumption of detention **is** or **is not** applicable to this defendant. **(Circle one)**

OCDETF CASE: \_\_\_\_\_ Yes X No

DATE: August 27, 2009

DEFENDANT: PUBLIC SERVICE COMPANY OF COLORADO

ADDRESS: Denver, Colorado

COMPLAINT FILED? \_\_\_\_\_ YES X NO

IF YES, PROVIDE MAGISTRATE CASE NUMBER: \_\_\_\_\_

IF NO, PROCEED TO "OFFENSE" SECTION

HAS DEFENDANT BEEN ARRESTED ON COMPLAINT? \_\_\_\_\_ YES X NO

IF NO, A NEW WARRANT IS REQUIRED

OFFENSE:

\_\_\_\_\_ COUNT ONE THROUGH FIVE: Title 29, United States Code, Section 666,  
Violating OSHA Regulation and Causing Death.

LOCATION OF OFFENSE (COUNTY/STATE): Clear Creek County, Colorado.

PENALTY: COUNT ONE THROUGH FIVE: NMT \$500,000 fine for each Count;  
\$100 Special assessment fee.

AGENT: Michael Lynham, OSHA

AUTHORIZED BY: John Haried  
Assistant U.S. Attorney

ESTIMATED TIME OF TRIAL:

\_\_\_\_\_ five days or less X over five days \_\_\_\_\_ other

THE GOVERNMENT

\_\_\_\_\_ will seek detention in this case X will **not** seek detention in this case

The statutory presumption of detention **is** or **is not** applicable to this defendant. **(Circle one)**

OCDETF CASE: \_\_\_\_\_ Yes X No

DATE: August 27, 2009

DEFENDANT: RPI COATING, INC..

ADDRESS: Santa Fe Springs, California

COMPLAINT FILED? \_\_\_\_\_ YES X NO

IF YES, PROVIDE MAGISTRATE CASE NUMBER: \_\_\_\_\_

IF NO, PROCEED TO "OFFENSE" SECTION

HAS DEFENDANT BEEN ARRESTED ON COMPLAINT? \_\_\_\_\_ YES X NO

IF NO, A NEW WARRANT IS REQUIRED

OFFENSE:

\_\_\_\_\_  
COUNT ONE THROUGH FIVE: Title 29, United States Code, Section 666,  
Violating OSHA Regulation and Causing Death.

COUNT SIX: Title 18, United States Code, Section 1519, Obstruction.

LOCATION OF OFFENSE (COUNTY/STATE): Clear Creek County, Colorado.

PENALTY: COUNT ONE THROUGH FIVE: NMT \$500,000 fine for each Count;  
\$100 Special assessment fee.

COUNT SIX: NMT \$500,000 fine; \$100 Special assessment fee.

AGENT: Michael Lynham, OSHA

AUTHORIZED BY: John Haried  
Assistant U.S. Attorney

ESTIMATED TIME OF TRIAL:

\_\_\_\_\_ five days or less X over five days \_\_\_\_\_ other

THE GOVERNMENT

\_\_\_\_\_ will seek detention in this case X will **not** seek detention in this case

The statutory presumption of detention **is** or **is not** applicable to this defendant. **(Circle one)**

OCDETF CASE: \_\_\_\_\_ Yes X No

DATE: August 27, 2009

DEFENDANT: PHILIPPE GOUTAGNY

YOB: 1953

ADDRESS: Santa Anna, California

COMPLAINT FILED? \_\_\_\_\_ YES X NO

IF YES, PROVIDE MAGISTRATE CASE NUMBER: \_\_\_\_\_  
IF NO, PROCEED TO "OFFENSE" SECTION

HAS DEFENDANT BEEN ARRESTED ON COMPLAINT? \_\_\_\_\_ YES X NO

IF NO, A NEW WARRANT IS REQUIRED

OFFENSE:

\_\_\_\_\_ COUNT ONE THROUGH FIVE: Title 29, United States Code, Section 666,  
Violating OSHA Regulation and Causing Death.

LOCATION OF OFFENSE (COUNTY/STATE): Clear Creek County, Colorado.

PENALTY: COUNT ONE THROUGH FIVE: NMT 6 months imprisonment for each count;  
NMT \$250,000 fine for each count, or both; \$100 Special assessment fee

AGENT: Michael Lynham, OSHA

AUTHORIZED BY: John Haried  
Assistant U.S. Attorney

ESTIMATED TIME OF TRIAL:

\_\_\_\_\_ five days or less X over five days \_\_\_\_\_ other

THE GOVERNMENT

\_\_\_\_\_ will seek detention in this case X will **not** seek detention in this case

The statutory presumption of detention **is** or **is not** applicable to this defendant. **(Circle one)**

OCDETF CASE: \_\_\_\_\_ Yes X No

DATE: August 27, 2009

DEFENDANT: JAMES THOMPSON

YOB: 1949

ADDRESS: West Canyon Lake, California

COMPLAINT FILED? ☐ YES ☒ NO

IF YES, PROVIDE MAGISTRATE CASE NUMBER: \_\_\_\_\_

IF NO, PROCEED TO "OFFENSE" SECTION

HAS DEFENDANT BEEN ARRESTED ON COMPLAINT? ☐ YES ☒ NO

IF NO, A NEW WARRANT IS REQUIRED

OFFENSE:

\_\_\_\_\_  
COUNT ONE THROUGH FIVE: Title 29, United States Code, Section 666,  
Violating OSHA Regulation and Causing Death.

LOCATION OF OFFENSE (COUNTY/STATE): Clear Creek County, Colorado.

PENALTY: COUNT ONE THROUGH FIVE: NMT 6 months imprisonment for each count;  
NMT \$250,000 fine for each count, or both; \$100 Special assessment fee

AGENT: Michael Lynham, OSHA

AUTHORIZED BY: John Haried  
Assistant U.S. Attorney

ESTIMATED TIME OF TRIAL:

☐ five days or less ☒ over five days ☐ other

THE GOVERNMENT

☐ will seek detention in this case ☒ will **not** seek detention in this case

The statutory presumption of detention **is** or **is not** applicable to this defendant. **(Circle one)**

OCDETF CASE: ☐ Yes ☒ No